

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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| In the Matter of the Application of Working Assets Funding Service, Inc. dba Working Assets Long Dis- tance, San Francisco, California which seeks authority to operate as a reseller of telecommunications services within the State of Neb- raska. |) Application No. C-965)))) GRANTED)))) Entered: April 12, 1993 |
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APPEARANCES

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BY THE COMMISSION

PRELIMINARY MATTERS

By application filed December 14, 1992, Working Assets Funding Service, Inc. dba Working Assets Long Distance (WALD) of San Francisco, California seeks authority to operate as a reseller of interexchange telecommunications services in Nebraska. The Applicant's principal place of business (which is the location where its books and records are kept) is noted above. The CT Corporation here in Lincoln, Nebraska is the Applicant's registered agent. Notice of the application was published in the Omaha Daily Record December 17, 1992 (Exhibit 1). No protests to the application were received. Notice of hearing was sent to the Applicant by the Commission's Executive Director January 27, 1993 (Exhibit 2). A hearing on the matter was held February 23, 1993 in the Commission Hearing Room, 300 The Atrium, 1200 "N" Street, Lincoln, Nebraska with appearances as shown. Commissioner Gay chaired the proceeding.

At the hearing, Exhibits A through I were marked and accepted for the record. These exhibits include a copy of the Applicant's articles of incorporation, certificate to do business as a foreign corporation in Nebraska, and a proposed tariff. The Applicant's witness testified, and the pleadings reflect, that the Applicant seeks both interLATA and intraLATA authority. The filed application, upon which the Omaha Daily Record notice was based, does not seek authority to provide Alternate Operator Service (AOS). We

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observe the Commission has consistently held an application for reseller authority does not include AOS unless specifically petitioned for in the application.¹

O P I N I O N A N D F I N D I N G S

Upon consideration of the application, the governing statutes and rules², the evidence adduced at the hearing, and being fully informed, the Commission is of the opinion and finds:

Nebraska was divided into three Local Access Transport Areas (LATAs) as a result of the terms of the Modified Final Judgement (MFJ) issued in the AT&T divestiture case. United States v. American Telephone & Telegraph Co., 552 F.Supp. 131 (D.D.C. 1982), aff'd sub nom., California v. United States, 460 U.S. 1001 (1983) and United States v. American Telephone & Telegraph Co., 569 F.Supp. 990 (D.D.C. 1983) aff'd sub nom., California v. United States, 460 U.S. 1001 (1983).

While Neb. Rev. Stat. 75-604, by its language, refers to local exchange service, the Nebraska Supreme Court in Northwestern Bell Telephone v. Consolidated Telephone Co., 180 Neb. 268, 142 N.W.2d 324 (1966) held that long distance service is also subject to the provisions of the statute. This was recognized by the Legislature in L.B. 835 (LAWS 1986) because interexchange services (which include resellers) in Sec. 86-805 are referenced to in Sec. 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA resale when deciding reseller applications.

Steven Gunn testified on behalf of the Applicant. He is the company's Vice President for Operations. Gunn holds a bachelor's degree in economics from the University of Massachusetts. He previously worked 12 years for MCI before joining WALD.

WALD was incorporated in California in 1985. It is a stand-alone corporation and is privately held. WALD's corporate officers are Laura Scher (CEO and Chairperson), Peter Barnes (President), Michael Kieschnick (Chief Financial Officer), Jimmy Daukas (V-

¹We note that a late-filed amendment to add AOS to the application is an inadequate solution; the previously published notice of the application would not accurately reflect the authority sought in the application.

²Interexchange reseller applications are governed by Neb. Rev. Stats. 75-604 and 86-805 (1990 and 1987 Reissues, respectively) and Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.12.

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President for Marketing) and Gunn. These individuals, as well as Drummon Pike and Julia Parzen, constitute this company's major stockholders.

If granted authority, WALD intends to offer in equal access areas Message Telecommunications Service (MTS)³ (primarily a residential service) Switched WATS⁴ (primarily a business-oriented service) and 800 service⁵. Calling cards are also offered by WALD.⁶ The initial emphasis will be on the MTS offering. WALD does not collect advance payments or deposits, but does reserve the right to collect one month's advance payment (estimated) from commercial subscriber's who have suspect payment history. The company is non-facilities based and resells the long distance service of Sprint Communications Company L.P. (Sprint). Attached Exhibit F contains the Volume Purchase Agreement between WALD and Spring. Examination

³MTS is an outbound, switched service. Subscribers dial 1+ plus the area code and number for all non-operator assisted long distance calls. Charges for MTS are based on the distance and duration of the call, monthly usage, and the rate period (day, evening, night/weekend) when the call was placed. Distance is measured from the rate center of the calling number as represented by the ANI to the rate center of the called number. All MTS calls are billed in full minute increments. Operator Services, Directory Assistance, and Calling Cards are available to MTS subscribers.

⁴Switched WATS is a virtually banded outbound toll service. Switched WATS customers utilize their service in the same fashion as MTS. Charges for Switched WATS are billed according to the total monthly usage within each account for each rate period. The rate charged is determined by the date and time the call originates at the service originating location. All Switched WATS calls are rounded to the next six second increment.

⁵800 Service is a virtual banded inbound toll service which permits calls to be completed at the subscriber's location without charge to the calling party. Calls are originated via normal shared use facilities and are terminated via the subscriber's local exchange service line. Charges are based on duration of the call, rate period when the call terminates at the subscriber's location, and total amount of monthly usage within each account for each rate period. All 800 Service calls are rounded to the next six second increment.

⁶Subscribers using a calling card dial 1-800-766-0606 plus "0" plus the area code and number plus the subscriber's 14 digit Personal Identification Number (PIN) for all long distance calls. Charges for calling card use are determined in the same way as MTS. All calling card calls are billed in full minute increments.

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of the agreement shows it is a standard agreement between Sprint and a reseller company. Gunn testified that the rates WALD will charge will be offered to its subscribers at about five percent less than Sprint's rates.

Gunn testified that WALD has, as of the date of the hearing, approximately 80,000 subscribers across the United States in those states where it operates, although the application (which was prepared prior to December, 1992) mentions a figure of 60,000. These subscribers are generating 1.5 million calls a month.

According to the application and to Gunn in his testimony, WALD has received authority to provide long distance services as a reseller in the following states:

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|--------------|--------------------|----------------|-------------------|
| California | March 22, 1991 | Massachusetts | May 22, 1992 |
| New York | June 13, 1991 | Florida | May 26, 1992 |
| Oregon | July 12, 1991 | Indiana | June 17, 1992 |
| Wisconsin | September 12, 1991 | Washington | June 30, 1992 |
| Maryland | November 20, 1991 | Minnesota | July 23, 1992 |
| Illinois | December 9, 1991 | Idaho | August 18, 1992 |
| North Dakota | December 17, 1991 | Pennsylvania | August 19, 1992 |
| Vermont | February 28, 1992 | Kansas | October 13, 1992 |
| Texas | April 23, 1992 | North Carolina | October 23, 1992 |
| West VA | May 18, 1992 | Georgia | November 24, 1992 |

Applications were pending at the time of the hearing before us in Louisiana, Missouri, New Mexico, and Ohio.

There have been no formal or informal complaints filed against the Applicant by state commissions. WALD was denied a certificate of authority by the South Carolina Commission recently. Apparently, the South Carolina Commission misconstrued the elimination of a letter of credit between WALD and the Society Bank of Toledo, Ohio. Whereas, the termination was a mutually agreed upon transaction between WALD and the bank, the South Carolina Commission viewed the severing as an act by the bank to withdraw credit. Gunn testified the line of credit was mutually agreed upon because the credit history of WALD had become satisfactory. WALD has petitioned the South Carolina Commission to reconsider its previous action.

The Applicant's financial information is contained in Exhibits H, I, and late-filed J. Together, they show the following state of the Applicant's financial condition.

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|------------------------------------|-----------|
| Dec. 31, 1989 (YTD) | |
| Revenues | \$ 2.400M |
| Expenses | 2.070M |
| Income | .330M |
| Net Income | .200M |
| <hr/> | |
| Assets | 1.186M |
| Liabilities & Shareholders' Equity | 1.186M |

| | |
|------------------------------------|-----------|
| Dec. 30, 1990 (YTD) | |
| Revenues | \$ 2.086M |
| Expenses | 2.376M |
| Income | -.289M |
| Net Income | -.217M |
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| Assets | 1.148M |
| Liabilities & Shareholders' Equity | 1.148M |

| | |
|------------------------------------|-----------|
| Dec. 31, 1991 (YTD) | |
| Revenues | \$ 2.338M |
| Expenses | 2.042M |
| Income | -.704M |
| Net Income | -.631M |
| <hr/> | |
| Assets | 1.407M |
| Liabilities & Shareholders' Equity | 1.407M |

| | |
|------------------------------------|-----------|
| Dec. 31 1992 (YTD) | |
| Revenues | \$14.397M |
| Expenses | 12.613M |
| Income | 1.784M |
| Net Income | -1.459M |
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| Assets | 3.410M |
| Liabilities & Shareholders' Equity | 3.410M |

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|-----------------------|----------|
| 1992 Quarterly Income | |
| First Quarter | \$-.552M |
| Second Quarter | -.390M |
| Third Quarter | -.414M |
| Fourth Quarter | -.102M |

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|--|-----------|--------|----------|
| Projected Profit and Loss Statement for 1993 | | | |
| | Jan. | July | December |
| Revenues | \$2.351M | 2.833M | 3.279M |
| Ttl Expenses | 2.269M | 2.655M | 3.033M |
| Net Income | .048M | .107M | .147M |
| <hr/> | | | |
| 12 Month Total | | | |
| Revenues | \$33.603M | | |
| Total Expenses | 31.627M | | |
| Net Income | 1.185M | | |

Gunn stated that the Applicant's primary target market is residential subscribers. The company advertises itself through mailers, an 800 call back, and outbound telemarketing. Gunn also testified that WALD did not engage in multi-level marketing to build its subscriber base.

The Applicant's proposed tariff which is part of its application is in accordance with the Commission's rules and regulations. It is distance and time sensitive. The tariff appears reasonable in light of the proposed service.

The facilities of the Applicant now in place are providing interstate service. Applicant does not propose to construct facilities for use in intrastate service; therefore, no existing facilities will be duplicated if this application is granted for reseller service.⁷

Finally, at the hearing, Commissioner Gay requested that WALD provide an explanation as to why the company's asset base has continued to grow over the last three years while, until very recently, the company was losing money. WALD answered as follows:

"Our asset base consists primarily of receivables from customers and cash. Both have grown over the past three years. Receivables from customers have grown because we have grown our customer base from zero to over 70,000 customers. Our cash has grown because we raised more capital than our operating losses (\$1.5 million in preferred stock and \$1 million in term subordinated debt)."

Based on the testimony, the exhibits, and the proposed tariff, the application is fair and reasonable, is in the public interest, and should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-965 be, and it is hereby, granted and Working Assets Funding Service, Inc. dba Working Assets Long Distance of San Francisco, California is hereby authorized to operate as a resale carrier of intrastate interexchange interLATA

⁷See Section 75-604.

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and intraLATA telecommunications services within the state of Nebraska.

IT IS FURTHER ORDERED that the Applicant shall file, in accordance with the applicable statutes, an annual report with this Commission consisting of (a) a copy of any report filed with the Federal Communications Commission, (b) the annual report to stockholders, and (c) for the State of Nebraska on a combined interstate-intrastate basis, the investment in telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues, operating expenses, and taxes.

IT IS FURTHER ORDERED that the Applicant file an updated tariff prior to offering service pursuant to the certificate granted in this order.

IT IS FINALLY ORDERED that this order be, and it is hereby, made the Commission's official certificate of authority to furnish the service authorized herein as a common carrier.

MADE AND ENTERED at Lincoln, Nebraska this 12th day of April, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel B. Quiville
Duane D. Gay

//s//Frank E. Landis, Jr.
//s//James F. Munnelly

James F. Landis
Chairman

ATTEST:

Patricia R. King
Executive Director

